



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
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MAY 05 1998

OFFICE OF PROGRAMS
POLICY AND SYSTEMS

Ms. Cynthia L. Johnson
Director, Cash Management Policy and Planning Division
Financial Management Service
Department of the Treasury
Room 420
401 14th Street, S.W.
Washington D.C. 20227

Dear Ms. Johnson:

The Railroad Retirement Board (RRB) has the following comments on proposed rule 31 Code of Federal Register (CFR) 210, dated February 2, 1998.

General

- We appreciate efforts by Treasury to make definitions more specific, restrict government liability and tighten financial institution liability.
- Our Debt Recovery Division raised some concerns about the direction of the regulation, however, we support Treasury's approach of adopting the National Automated Clearing House (NACHA) rules, where appropriate, for Government Electronic Funds Transfer (EFT) payments. We believe that over time this approach will simplify and standardize the EFT payment method to the benefit of the financial community, Government and the recipients of benefit payments. Initially, it will be difficult for the agencies to adjust to referencing various rules and procedures. An advantage of the current approach to 31 CFR 210 is that it provides a comprehensive description of the Automated Clearing House (ACH) process for Government payments.

Without the benefit of the implementing procedures from *The Green Book* or the *Treasury Financial Manual*, it is difficult to evaluate some of the changes represented in this version of the regulation. We strongly recommend that this rule not be made final until agencies have had the opportunity to consider the impact of the regulation in the context of these two supporting procedural manuals. In addition, it is critical that Treasury keep *The Green Book* and the *Treasury Financial Manual* current.



ACH #13

UNITED STATES RAILROAD RETIREMENT BOARD

-2-

- We have concerns about the decision that Treasury will not be considered an ODFI or RDFI. The background explains that:

"The Service does not believe that it is appropriate to assume liability arising from the acts and omissions of Federal agencies originating and receiving ACH entries. Accordingly, although it is the Service's view that Federal agencies operate as originators and receivers and the Service operates as an ODFI and RDFI from a functional perspective, the Service believes it is appropriate to impose upon Federal agencies that originate or receive ACH entries the obligations and liabilities imposed on ODFIs and RDFIs, respectively, for the purposes of the ACH Rules."

While we recognize Treasury's concern about assuming the liability for errors made by the program agency, this decision appears to put the agency in the position of accepting liability for Treasury and/or Federal Reserve Bank errors. This also seems inappropriate. Since the RRB is required to issue payments through Treasury, and Treasury can make mistakes but is not held liable, this appears to make RRB responsible for Treasury's errors. While the regulation authorizes reversal actions, are agency Trust Funds charged for the erroneous payments until that action is completed? This would require agency Trust Funds to pay for the mistakes of others. This seems to be a high risk to Trust Fund management.

- The RRB supports increased automation of EFT reclamation processing. We expect EFT payment volumes and the subsequent reclamations to increase with the implementation of the Debt Collection Improvement Act of 1996. We are concerned about Treasury's and the RRB's abilities to respond to these increased volumes in a highly labor-intensive, paper process. It is important to the RRB that credits from the reclamation process be received electronically.
- The background of this regulation solicits comments on the Saturday payment date issue. The suggestion is that commentators provide input on ways to issue payments earlier. It is unfortunate that Treasury posed this solution. Currently, the Railroad Retirement Act prohibits issuing payments before the first of the next calendar month. Suggesting in a public forum that the answer is just matter of timing of payment transmission, minimizes the problems faced by RRB. It also sets unrealistic expectations.

Specific Section Comments

- In section 210.2 (h), replace "Railroad Retirement Board Retirement and Annuity" with "Railroad Retirement annuity and Railroad Unemployment and Sickness benefits."

UNITED STATES RAILROAD RETIREMENT BOARD

-3-

- Section 210.4 (c) (3) says "If an RDFI closes an account, it shall provide 30 calendar days' written notice to the recipient prior to closing the account..."

While the intention is good, to allow the beneficiary to plan to redirect the payment, we question if this is appropriate in the Government's regulations for EFT. The RRB has not had a problem with accounts closed by financial institutions. We question whether this action is really a surprise to the account holder. We believe that it is more common that the account is closed based upon customer action but the payments are returned and therefore, delayed because of either our processing cycles or failure to report the event to the agency. We suggest that the process be improved with a different approach. If financial institutions sent a notice or report of closed accounts to the originator (electronically), then the agencies could use that notice to check their records and remove that account information. If no prior contact was made with the annuitant, we could initiate that contact. If we have new/different account information, we would disregard the notice. It seems that the program agencies all have processing established to respond to payments returned R02-account closed. What we would be able to do, in some cases, is initiate our actions before (rather than after) the payment is issued and returned. This would seem to be proactive rather than reactive customer service.

- Section 210.4 (c) (4) specifies the arrangements for insolvent banks. We like this addition to the regulation but wonder if 120 days are sufficient to restore order to these accounts. We also request more explanation of how the payments will be redirected and question whether this requires action by the originating agency or will all be handled by the Federal Reserve Bank (FRB) or Automated Clearing House (ACH). Will Treasury be able to trace or reclaim these redirected payments?
- Section 210.5 defines the types of accounts to which benefit payments will be deposited. We have two concerns in this area.
 - 1) We feel that it is difficult to anticipate the types of banking or money management services that may develop, especially in response to the mandatory EFT provisions of the Debt Collection Improvement Act of 1996. Section 210.5 (b) (2) authorizes deposits to an investment account, which is an account type currently available. Other types are certain to develop and may be equally acceptable and safe, but not covered by the regulation. Treasury should reconsider this section. Account title and account type is important to the RRB as a benefit payment agency in three ways. First, the individual entitled to the benefit payment receives the money. Second, the RRB can recover money deposited after the benefit terminates due to death or incapacity (the reclamation process). Finally, agencies can rely on the financial institution as our contact with the annuitant (we will receive reports of death, incapacity, address

UNITED STATES RAILROAD RETIREMENT BOARD

-4-

information, etc.). If the liability issues remain as clear as they are in 210.10 and they are enforced, is it necessary for the regulations to describe all valid types of account titles?

- 2) When the NACHA rules group was considering deposits to general ledger accounts, RRB supported the change because we felt it would allow RRB to "settle" over-reimbursements with banks electronically rather than issuing a paper check. The background to this section states:

"The Service is aware that NACHA has approved...crediting of entries to general ledger accounts and loan accounts. The Service does not intend to accept the amendment with respect to certain benefit payments."

We would not expect to issue recurring benefit payments to general ledger accounts but we hope the use of the word "certain" means that RRB will be able to use this method for settlement type payments because they are one-time payments. While our volume of this type of settlement payment has dropped, without acceptance of this NACHA rule, this remains a payment type that we will be forced to issue as a paper check. We feel this contrary to the EFT mandate.

Our Debt Recovery Division raised concerns about the Government's ability to reclaim beneficiary payments deposited in investment accounts in the name of a broker or dealer and how procedure will address changes in the value of funds deposited due to decrease in the value of the investment instrument.

- We could better evaluate section 210.6 if we had *The Green Book* and the *Treasury Financial Manual* procedures. Without these procedures and interpretations, we have a number of questions and concerns.

- 1) Section 210.6 (a) states "An agency may receive ACH debit or credit entries only with the prior written authorization of the Service." We understand this to mean that before RRB can utilize a new ACH entry type, we must receive written permission from Treasury.
- 2) Section 210.6 (b) states "An agency shall send a prenotification prior to origination of the first debit entry to an account." We understand "debit" in this section to be a preauthorized debit arrangement as used to pay bills and not a debit that occurs with reclamation or reversal. Is this understanding correct?

UNITED STATES RAILROAD RETIREMENT BOARD

-5-

3) Section 210.6 (c) states that:

"An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies)."

We support the decision to limit Government liability to the amount of the entry. Without the procedure and interpretation of *The Green Book* and the *Treasury Financial Manual*, we cannot properly determine what additional impact this section has on the RRB.

4) Section 210.6 (g) discusses reversals of duplicate files. It says "If the Federal Government reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file." Like section 210.6 (c), we appreciate that the limit is established as the amount of the entry but we question which agency is liable and where the money comes from. When funds are withdrawn prior to the RDFI's processing of the reversal, will the agencies need to take recovery actions against the beneficiary regardless of who created the errors Treasury, the FRB, or the agency?

We understand this section to say agencies can reverse separate payments but the Federal Government (Treasury or the Federal Reserve Bank) can reverse an entire file. Is this understanding correct? A definition of the Federal Government should be added to 210.2.

- Section 210.10 requires that the RDFI immediately notify the agency of the death or incapacity. Is there a new reporting mechanism being developed? Currently the financial institution will wait and return the next payment. We support a more timely notification of death process. We suggest that agencies become recipients of Death Notification Entry (DNE) transactions.
- Section 210.10 (d) limits the time for initiating reclamation to 120 days from the date an agency receives notice of death. This was reduced from the 1 year allowed under the 1994 Notice of Proposed Rule Making (NPRM). This limit is too severe. We do not believe that Treasury has provided sufficient reason for this change. The introduction to this section states "This provision is intended to encourage Federal agencies to act in a timely manner in initiating reclamations..." The majority of RRB's reclamation requests are mechanically generated 30 days after notice of death is received. We believe this is the appropriate time period for this action because it is prompt but allows a reasonable amount of time for the financial institution to return payments in

UNITED STATES RAILROAD RETIREMENT BOARD

-6-

response to the DNE. Slower initial requests occur in exception processing cases. The majority of the RRB's reclamation requests delayed beyond 120 days are non-recurring (daily) payments which reject from Treasury's claims processing. Until RRB can be certain that all reclamation attempts will be successful when initially submitted, this 120 day restriction will result in unrecovered debts and a penalty on the agency's Trust Funds due to Treasury processing problems. We recognize the need to impose a time limit for initiating reclamation requests, but we feel that reclamations released within a year of the date when an agency receives notice of death should be no great inconvenience to financial institutions. Retaining the one year request period should have no negative impact on financial institution liability; it could only help in making RRB funds whole by returning money to which we are entitled and/or allowing us to secure information on persons accessing funds to which they are not entitled. We strongly request retention of the one year reclamation request period.

- Section 210.10 (d) forbids an agency from requesting reclamation of any post-death or post-incapacity payments made more than six years prior to the most recent payment made by the agency to the recipient's account. At the same time it states:

"That if the amount in the account at the time the RDFI receives the notice of reclamation exceeds the total amount of all payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all payment made, up to the amount in the account at the time the RDFI receives the notice of reclamation."

Our Debt Recovery Division is concerned about the implementation of this provision because it appears that while the agency is entitled to these additional payments the regulation does not provide an avenue to access them. The concern is that if the agency cannot specify all of the payments needed, the financial institution will not know the entire amount and the agency will be unable to determine if more money exists in the account. We are also concerned that limiting the number of payments we can request will result in our failure to learn who withdrew the funds. We need this information for our recovery actions. We believe a simpler approach is for agencies to request reclamation of all funds which are not payable due to death or incapacity. The financial institution can either return the funds if they exist in the account or send information on the person who withdrew the funds. Any six month limitation on the RDFI's liability would be imposed after this initial recovery attempt. Cases requiring recovery of more than six-years of payments are uncommon, but when they occur, large overpayments are involved.

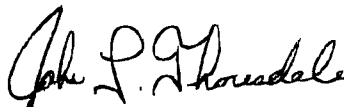
UNITED STATES RAILROAD RETIREMENT BOARD

-7-

- Section 210.11 (a) (1) (i) sets RDFI liability, in part, as the amount in the account when the reclamation request is received. This is a change from the amount in the account when the RDFI received a notice of reclamation and has had a reasonable time to take action. We support this change. In the event deposits were made to a joint account, however, it seems difficulties exist in prohibiting ATM withdrawals and other debit activity, as proposed.

If you or members of your staff have any questions, please contact me at (312) 751-4800 or Ms. Denise LeSeur-Waechter at (312) 751-3337.

Sincerely,


John L. Thoresdale
Director

FAX TRANSMISSION

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NUMBER OF PAGES: 8
MESSAGE:

Attached are the Railroad Retirement Board's comments on 31CFR 210. I will put the original in the mail today.

If you or your staff have any questions, don't hesitate to call me.